

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MAXIMILLIAN KLEIN, *et al.*,

Plaintiffs,

V.

META PLATFORMS, INC.,

Defendant.

Consolidated Case No. 3:20-cv-08570-JD

**[PROPOSED] ORDER GRANTING
CONSUMER PLAINTIFFS' MOTION
TO EXCLUDE FURTHER PORTIONS
OF THE EXPERT REPORT AND
TESTIMONY OF
DR. CATHERINE TUCKER**

This document relates to: *All Actions*

1 Now before the Court is Consumer Plaintiffs' Motion to Exclude Testimony of Dr. Catherine
 2 Tucker (the "Motion"). The Court, having considered the Motion and its accompanying
 3 memorandum, hereby finds that the Motion is **GRANTED**.

4 Expert testimony must be both relevant and reliable to be admitted. Fed. R. Evid. 702; *Daubert*
 5 v. *Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993). A relevant expert opinion has a "valid
 6 connection to the pertinent inquiry." *Mullins v. Premier Nutrition Corp.*, 178 F. Supp. 3d 867, 888 (N.D.
 7 Cal. 2016) (quoting *United States v. Sandoval-Mendoza*, 472 F.3d 645, 654 (9th Cir.2006)). An expert
 8 opinion is reliable if it has "a reliable basis in the knowledge and experience of his discipline." *Daubert*,
 9 509 U.S. at 592. Courts consider a number of non-exclusive factors when determining if an expert
 10 opinion is reliable, such as, "(1) whether a theory or technique can be (and has been) tested, (2) whether
 11 the theory or technique has been subjected to peer review and publication, (3) the known or potential
 12 error rate of the particular scientific theory or technique, and (4) the degree to which the scientific
 13 technique or theory is accepted in a relevant scientific community." *Mullins*, 178 F. Supp. 3d at 888
 14 (quoting *Daubert*, 509 U.S. at 593–94). The expert opinion's proponent bears the burden of establishing
 15 its admissibility. *Cabrera v. Google LLC*, No. 5:11-cv-01263-EJD, 2022 WL 4468266, at *2 (N.D. Cal.
 16 Sept. 26, 2022).

17 Consumer Plaintiffs challenge three opinions of Dr. Catherine Tucker, one of Facebook's
 18 expert economists: (1) class actions promulgate fraud; (2) the but-for world is implausible because
 19 mushrooming fraudulent accounts would cause Facebook's unraveling; and, (3) if Facebook paid
 20 users to access and use their data, Facebook would only pay users who generated high advertising
 21 revenue for Facebook.

22 As to the first challenged opinion, Dr. Tucker admitted she is not an expert in class action
 23 claims administration. She is not a qualified expert in this field, and her opinions on this topic must
 24 be excluded. *Mullins*, 178 F. Supp. 3d at 900-01 (quoting Fed. R. Evid. 702).

1 With respect to the second challenged opinion, no objective, verifiable evidence supports Dr.
2 Tucker's opinion that fraudulent Facebook accounts are available in bulk for this price on the dark
3 web, much less that the bulk purchase of these accounts would cause Facebook's unraveling in the
4 but-for world. Given this lack of both independent testing and verifiable evidence, this opinion must
5 also be excluded. *Domingo ex rel. Domingo v. T.K.*, 289 F.3d 600, 605-06 (9th Cir. 2002).

6 Finally, the third opinion is not based on a scientifically reliable methodology must be
7 excluded. *Daubert*, 509 U.S. at 592.

8 The following material is hereby excluded from the record under *Daubert v. Merrell Dow*
9 *Pharmaceuticals, Inc.* and related precedents: Paragraphs ¶¶ 48-50; 70-80, including Exhibits 3 and
10 4, of Dr. Tucker's Opening Merits Report; Paragraphs ¶¶ 3, 27-28, 32, 34, 36, 37, 41; of Dr.
11 Tucker's Rebuttal Merits Report; footnote citations in support of these paragraphs; and her
12 deposition testimony on the excluded topics.

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15 **IT IS SO ORDERED.**

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17 Dated: _____, 2024

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19 HONORABLE JAMES DONATO
20 UNITED STATES DISTRICT JUDGE
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